

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re : Mathieu Gagne and Yuval Ofek  
Serial No. : 10/752,256  
Filed : January 6, 2004  
FOR : METHOD AND APPARATUS FOR CASCADING DATA  
THROUGH REDUNDANT DATA STORAGE UNITS  
EXAMINER : Mark A. Radtke  
ART UNIT : 2165

Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

Sir:

PRELIMINARY RESPONSE

This Preliminary Response is being submitted in connection with Applicants' Request for Continued Examination as a response to the Examiner's Arguments presented in a Final Office Action dated January 9, 2007. In that Final Office Action, the Examiner rejects claims 24 through 41 under 35 U.S.C. 102(e) as being anticipated by U. S. Patent 6,529,944.

Applicants submitted a Declaration of Douglas LeCrone relating to factual evidence supporting a date of conception on or before January 6, 1999. The Examiner alleges that the Declaration lacks factual evidence or documents that support a January 6, 1999 date of conception and diligence in the time between conception and the filing of the application.

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In response Applicants are submitting a supplemental Declaration of George A. Herbster, counsel for the applicants. Declarant states that he is the attorney of record in this application and prepared grandparent application Serial No. 09/251,812 that was filed on February 17, 1999, the effective filing date of the rejected application. The Declaration incorporates documents including (1) a document titled "Rules for Timefinder Operations" prepared on November 12, 1998, (2) Declarant's timesheets for that grandparent application and (3) a letter from Declarant to Mathieu Gagne, a named inventor.

U. S. Patent No. 6,529,944 has an effective filing date of January 6, 1999. Declarant states that he had conferences with the two inventors of record in 1998 in connection with the filing of this application that included conferences with the inventors in September and October, 1998. He had begun to work on the application in November, 1998 and received the Rules for Timefinder Operations document in November, 1998. On December 1, he forwarded a letter to one of the inventors that included draft claims and detailed drawings. Thereafter, the application was completed during January and up to February 17, 1999 with diligence.

Applicants respectfully submit that the evidence submitted with both the LeCrone and Herbster Declarations including the Exhibits to the Herbster Declaration, demonstrate that Applicants conceived the invention prior to January 6, 1999, at

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least as early as September 18, 1998 and were diligent in the time between conception and filing of the application on February 17, 1999. Consequently, Applicants respectfully request the Examiner reconsider his rejection under 35 U.S.C. 102(e) and allow claims 24 through 41.

If there are any questions, we urge the Examiner to call us collect.

Respectfully Submitted,

/George A Herbster/

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